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8 *ATTORNEYS FOR KNIGHT MOTORS, LP*

9 **IN THE UNITED STATES DISTRICT COURT**
10 **OF THE CENTRAL DISTRICT OF CALIFORNIA**
11 **LOS ANGELES DIVISION**

12 *In re: Hyundai and Kia Engine*
13 *Litigation, No. 8:17-cv-00838-JLS-JDE*
14 *and Flaherty v. Hyundai Motor*
15 *Company, Inc. et al, No. 18-cv-02223*
(C.D. Cal.)

KNIGHT MOTORS, LP
OBJECTIONS TO DEFENDANTS'
NOTICE REGARDING EXCLUSION
OF COMMERCIAL ENTITIES AND
MEMORANDUM OF POINTS AND
AUTHORITIES

JURY TRIAL DEMANDED

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OBJ. RE: DEFENDANTS' COMMERCIAL NOTICE AND MEMO OF PTS.
AUTH.

OBJECTIONS TO DEFENDANTS' NOTICE REGARDING COMMERCIAL ENTITIES AND MEMORANDUM OF POINTS AND AUTHORITIES

AND NOW COMES, Knight Motors, LP ("Knight Motors") by and through its counsel, The Archinaco Firm LLC and files the within Objections to Defendants' Notice Regarding Exclusion of Commercial Entities and Memorandum of Points and Authorities, averring in support as follows:

A. THE COMMERCIAL NOTICE IS MISLEADING AND SHOULD NOT BE APPROVED.

Whether someone is a member of the class or not is irrelevant to whether a recalled vehicle must be remedied as the Safety Act and the federal Recalls required both HMA and KIA to provide a remedy for vehicles that are affected by the engine bearing defect. 49 U.S.C. § 30120. Further, HMA is under a secondary obligation to comply with the Safety Act due to the Consent Agreement that it entered into with NHTSA regarding its engine bearing defect. See generally, Consent Order, ¶ 12(a)-(c); See also, ¶ 16 ("Nothing in this Consent Order discharges Hyundai from any obligation to comply with the Safety Act or regulations thereunder, including the obligation to carry out recalls in accordance with law").¹

With regard to the Safety Act, 49 U.S.C. § 30120(a) requires that:

when notification of a defect or noncompliance is required under section 30118(b) or (c) . . . the manufacturer . . . shall remedy the defect or noncompliance without charge when the vehicle or equipment is presented for remedy.

¹ The Consent Order is publicly available at NHTSA's website, located at: https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/rq17-004_hyundai_consent_order_executed_11272020.pdf

1 Additionally, Section 30120(a)(1)(A)(i)-(iii) provides a manufacturer with multiple
2 methods it can select from to remedy the defect, including by repairing, replacing or
3 providing a refund as set forth in the statute. Although the election of remedy is left
4 to the manufacturer, what is unequivocally clear is that one of the remedies must be
5 provided in a Section 30118(b) scenario as is instantly presented. Indeed, Section
6 30120 (c)(2) provides that “[f]ailure to repair a motor vehicle or replacement
7 equipment adequately not later than 60 days after its presentation is prima facie
8 evidence of failure to repair within a reasonable time. . . .”
9

10 Here, HMA and KIA have crafted a misleading notice to commercial entities
11 that improperly suggests and/or implies that they do not have an affirmative duty to
12 remedy the vehicles. Not only is there no mention of the Safety Act or HMA / KIA’s
13 obligations and duties under the Act, but additionally, the notice unequivocally states
14 that remedies offered to commercial entities are “goodwill gestures” only. This is
15 false, as the Safety Act makes clear. Further, there is nothing in the notice that
16 clarifies that both HMA and KIA are obligated under the Safety Act to provide a
17 remedy, independent of any Class Action Settlement, as they are required to do. As
18 such, the notice should not be approved, as it is misleading.
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21 Accordingly, the second bullet point paragraph in particular should be deleted
22 in its entirety, and replaced with appropriate language that includes a statement that
23 while an owner / entity is no longer entitled to benefits under the Settlement
24 Agreement, that an owner / entity is still entitled to have a qualifying automobile
25 remedied by HMA pursuant to 49 U.S.C. § 30120(a)(1)(A)(i)-(iii), and that the owner
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1 / entity should contact HMA. No language about “goodwill gesture” should be
 2 included in the updated notice.

3 Proposed remedied language for paragraph 2 of the notice is as follows (bold
 4 added, strikethrough deleted):

5
 6 While you are no longer entitled to the benefits provided by the
 7 Settlement, ~~since you have submitted a claim, as a goodwill gesture,~~
 8 ~~Hyundai is willing to offer benefits to you similar to those offered under~~
 9 ~~the Settlement should you be willing to provide a release of your~~
 10 ~~individual claims, you may be entitled to a remedy pursuant to the~~
 11 **Safety Act. (See, 49 U.S.C. § 30120(a)(1)(A)(i)-(iii)).** You will need to
 12 contact Hyundai about the ~~benefits~~ **remedy** you are seeking by e-
 13 mailing settlement@HMAEngineSettlement.com and referencing your
 14 receipt of this Notice. Hyundai will consider these requests on a case-
 15 by-case basis **consistent with the Safety Act.** Even if your claim was
 16 previously denied, Hyundai may ~~reconsider offering benefits to you~~ still
 17 provide a remedy to you. This Notice does not obligate Hyundai to
 18 provide you with ~~the same benefits for which you may have previously~~
 19 ~~submitted a Settlement claim~~ ~~benefits~~ beyond those conferred and set
 20 forth in the Safety Act.

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CERTIFICATE OF SERVICE

I, Jason A. Archinaco, Esquire, hereby certify that a true and correct copy of the foregoing ***KNIGHT MOTORS, LP OBJECTIONS TO DEFENDANTS' NOTICE REGARDING EXCLUSION OF COMMERCIAL ENTITIES AND MEMORANDUM OF POINTS AND AUTHORITIES*** was served to and upon the following this 24th day of May 2021 through the courts CM/ECF filing system:

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